

The Department of Fish and Game's Automated Licensing System Acquisition and Oversight

June 2000

Office of Performance Evaluations
Idaho State Legislature



Report 00-02

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At the direction of the Joint Legislative Oversight Committee, we have conducted an evaluation of the Department of Fish and Game's acquisition and oversight of its automated licensing system.

I respectfully submit our completed evaluation for your review and consideration. We conclude that the Department of Fish and Game did not comply with state purchasing laws and regulations when it acquired the licensing system, although we found no evidence of intent to violate law. In addition, the agreements through which the system was acquired lacked clear and complete contract terms, which complicated contract oversight and enforcement.

We further conclude that the department's current contract, signed in November 1999, is largely adequate. The process through which the current contract was established appears to have complied with applicable laws and regulations. However, we question the sole source determination the department was granted, because it was based on an inadequate portrayal of the department sharing a "joint" system with the Idaho State Lottery. The sole source determination allowed the department to negotiate a new contract with the same contractor without soliciting competitive bids and may have unfairly advantaged the current contractor.

Our evaluation also concludes that the department's process for paying its licensing system contractor could be improved. Inadequate review of most invoices, inadequate documentation to support payment amounts, and other weaknesses in the department's payment practices unnecessarily increased the risk of erroneous or duplicate payments to the system contractor. These practices present a serious future risk if not corrected.

Our report recommends the department amend its current contract to address identified weaknesses. We also recommend the department improve its contract payment oversight procedures and detail several steps that are needed.

Throughout this evaluation we received the full cooperation of Department of Fish and Game officials and staff as well as officials and staff from the Idaho State Lottery and the Department of Administration Division of Purchasing. This report was written and researched by Ned Parrish (lead), Jim Henderson, and Leslie Clement, with assistance from other Office of Performance Evaluations staff.

Respectfully submitted,

A handwritten signature in cursive script that reads "Nancy Van Maren".
Nancy Van Maren

Table of Contents

| | Page |
|---|------|
| Automated Licensing System Acquisition and Oversight | |
| Summary of Findings and Recommendations | vii |
| Summary of Conclusions | 2 |
| Background | 3 |
| Initial Licensing System Acquisition | 7 |
| Current Contract Establishment and Terms | 16 |
| Oversight of Contract Payments | 23 |
| Response to the Evaluation | |
| Department of Fish and Game | 33 |

List of Tables and Figures

| | | |
|----------|---|----|
| Figure 1 | States Implementing Automated Licensing Systems by Year of Implementation, 1994–1999 | 4 |
| Figure 2 | Key Events in the Department of Fish and Game’s Development of an Automated Licensing System, December 1994–November 1999 | 6 |
| Figure 3 | Application of Potential Exemptions to Formal Competitive Bidding Process | 9 |
| Figure 4 | Obligations That Should Have Been Specified Between the Parties Under Amendment No. 5 | 15 |
| Figure 5 | Assessment of the Department of Fish and Game’s 1998 Sole Source Request | 18 |
| Table 1 | Department of Fish and Game Payments to System Contractor, as of February 19, 2000 | 24 |

Summary of Report Findings and Recommendations

1. The Department of Fish and Game did not comply with state purchasing laws and regulations when it acquired its automated licensing system. *Page 8.*
2. The agreements under which the Department of Fish and Game acquired its licensing system lacked clear and complete terms, complicating contract oversight and enforcement. *Page 13.*
3. The Department of Fish and Game appears to have complied with applicable purchasing requirements in establishing the current five-year contract with its licensing system contractor. *Page 16.*
4. The Department of Fish and Game inadequately portrayed the Fish and Game and Lottery systems that had been developed in its request for a sole source determination. *Page 17.*
5. Although largely adequate, selected terms of the Department of Fish and Game's new contract with its licensing system contractor could be improved to better protect the state's interest. *Page 20.*
 - **We recommend the Department of Fish and Game amend its current contract to address identified weaknesses.** *Page 22.*
6. The payment terms in the Department of Fish and Game's new contract are reasonable when compared to the terms of the previous agreements. *Page 22.*
7. Overall, the Department of Fish and Game's process for paying its licensing system contractor could be improved. *Page 24.*

8. The Department of Fish and Game's review of contractor invoices was inadequate and, at times, led to inaccurate payments. *Page 25.*
9. Sixty-one percent of payment records did not contain sufficient documentation to support the amount paid. *Page 26.*
10. The Department of Fish and Game did not follow statutory requirements in its handling of questioned billings received from its licensing system contractor. *Page 27.*
11. Weaknesses in the Department of Fish and Game's contract payment procedures unnecessarily increased the risk of erroneous or duplicate payments. *Page 29.*
 - **We recommend that the Department of Fish and Game improve its contract payment oversight procedures.** *Page 30.*

The Department of Fish and Game's Automated Licensing System Acquisition and Oversight

On January 27, 2000, the Joint Legislative Oversight Committee directed us to evaluate several issues related to the Department of Fish and Game. In March 2000, we issued a limited scope evaluation addressing issues primarily related to the department's financial management. This evaluation examines another of the issues requested: concerns that had arisen about the department's acquisition of an automated licensing system. Voiced concerns ranged from whether the department followed applicable requirements in acquiring the system to whether the department's contract oversight adequately protected the state's interests.

We asked:

- What process did the Department of Fish and Game follow to acquire its automated licensing system? Did the department comply with applicable statutes, rules, and procedures in acquiring the system?
- What terms and conditions were incorporated into the various agreements between the Department of Fish and Game, the Idaho State Lottery, and the licensing system contractor? How well did those terms provide for the department's needs and protect the state's interests?
- How well has the department managed payments to the licensing system contractor?

We reviewed the department's contractor selection, contract terms, and payment oversight.

Given our charge, we did not evaluate the performance of the automated licensing system. Instead, we focused on contractor selection, the agreements through which the system was acquired, and payment oversight. We reviewed Idaho Code, administrative rule, budget documents, and legislative committee and Fish and Game Commission meeting minutes from 1994 to present. We reviewed data from the Statewide Accounting and Reporting System and relevant department records. We interviewed department officials and staff, as well as officials and staff of the

Idaho State Lottery, the Division of Purchasing in the Department of Administration, the Office of the Attorney General, and the automated licensing system contractor. We also contracted with an outside firm with extensive experience in state, federal, and private contract law to provide legal analysis of the various agreements and other documents.

SUMMARY OF CONCLUSIONS

- ◆ While we found no evidence of intent to violate law, the Department of Fish and Game did not comply with state purchasing laws and regulations when it acquired its automated licensing system. In addition, the agreements through which the system was acquired lacked clear and complete contract terms, complicating contract oversight and enforcement. *Pages 7–15.*
- ◆ The department appears to have complied with purchasing requirements when it established its current five-year contract with the licensing system contractor in November 1999. However, we found the department inadequately portrayed the Fish and Game and Lottery systems that had been developed in its request for a sole source determination; that determination allowed the department to enter a new contract without soliciting competitive bids. In addition, while largely adequate, selected terms of the new contract could be improved to better protect the state's interests. The current contract's payment provisions are reasonable when compared to the previous agreement. *Pages 16–23.*
- ◆ The department's process for paying its licensing system contractor could be improved. The department did not adequately review and document payments to the contractor. In addition, the department did not follow the statutorily defined process for handling questioned billings. Weaknesses in the department's contract payment practices increased the risk of erroneous or duplicate payments, and present a future risk if not corrected. *Pages 23–30.*

BACKGROUND

With some exceptions, Idaho Code requires persons to obtain a license from the Department of Fish and Game to hunt or fish.¹ Additional permits or tags are required to hunt or fish for certain species or under certain conditions. In recent years, the department has issued an average of 1.2 million licenses, tags, and permits each year. Taken together, license fees have funded nearly half of the department's operations over the past four fiscal years.²

Currently, licenses, permits, and tags may be purchased from one of approximately 450 retail license vendors around the state.³ Each license vendor uses a terminal connected to a computer operated by the department's automated licensing system contractor. The terminal enables the vendor to record information from license applicants, such as name, address, and phone number, and verify that applicants already hold any licenses required for the desired permits or tags. The terminal displays any information previously collected, which needs only to be verified for accuracy at subsequent purchases. Because the retail vendor terminals are directly connected to a central computer, data about license sales are available to the department as soon as sales transactions are completed. Among other uses, the department relies heavily on the demographic information collected by license vendors to monitor the accuracy of its game harvest data.

Few states have automated licensing systems. As Figure 1 shows, in 1994, Oregon became the first state to implement an automated system. Idaho's system was acquired the following year, along with systems in two other states. By the end of 1999, a total of 14 states had automated systems.

**On average,
the department
issues 1.2
million
licenses, tags,
and permits
each year.**

**Licenses are
sold by
approximately
450 retail
vendors
around the
state.**

¹ IDAHO CODE § 36-401 (Supp. 1999). Exceptions include children under 14, resident military personnel on leave, those fishing on "free fishing day," and Boy Scouts participating in national or international encampments at Farragut State Park.

² Department operations are also funded by federal grants, leases, sales of printed materials, and similar items.

³ Licenses may also be purchased at department headquarters, its regional offices, by telephone, and through the Internet.

Idaho was one of the first states to establish an automated licensing system.

Figure 1: States Implementing Automated Licensing Systems by Year of Implementation, 1994–1999^a

| <u>State</u> | <u>Year</u> |
|----------------|-------------|
| Oregon | 1994 |
| Idaho | 1995 |
| Michigan | 1995 |
| Kentucky | 1995 |
| Missouri | 1996 |
| Texas | 1996 |
| North Carolina | 1997 |
| Maryland | 1998 |
| Arizona | 1999 |
| Georgia | 1999 |
| Louisiana | 1999 |
| Ohio | 1999 |
| Tennessee | 1999 |
| Wisconsin | 1999 |

^a Does not include Internet license sales.

Source: International Association of Fish and Wildlife Agencies, *Progress Reports of Fish and Wildlife Agencies Efforts to Plan and Implement Automated License Systems* (visited 21 April 2000) <http://www.iafw-awds.com/main_pages/progreport.htm>.

The department turned to an automated system to address problems with its paper licensing system.

Until 1996, the Department of Fish and Game issued blank license forms to retail vendors who completed the license forms by hand at the time of sale. According to a department official, an automated system was needed because:

- Preprinted license forms created excessive amounts of paperwork in issuing license stock to retail vendors and in controlling blank, unused license stock.
- All tags could not be provided to all vendors due to the low volume of sales of some tags. Consequently, these tags could not be sold on a first-come basis statewide.

- Retail vendors had problems with issuing duplicate licenses since information needed to verify the original purchase was not readily available.
- Vendors said that applicants had to wait too long for them to fill out license forms by hand.
- A department study concluded that retail vendors spent approximately \$1.10 to issue each license and received \$1 of the license fee.
- Data about licenses, permits, and tags took too long to compile. Information from licenses was entered manually, a labor-intensive and time-consuming process.
- Data were not timely available to reconcile payments from retail vendors, to provide license revenue information, and to identify respondents for telephone harvest surveys.

Consequently, in the early 1990's, the Department of Fish and Game began researching automated licensing systems. According to a department official, between 1990 and 1994, as part of planning for the new automated system, department staff participated in the Western Association of Conservation Administrators' efforts to explore common license data elements, identified data requirements, contacted other states regarding their licensing systems, and surveyed Idaho retail vendors to obtain their comments on desired system features and functions.

In addition, in the fall of 1994, the department conducted eight regional meetings for Legislators and retail license vendors to discuss migrating from a manual system to an automated system. At those meetings, the department conducted system demonstrations of a product installed in Oregon by the same contractor that has since developed Idaho's system.

In 1994, the department was approached by an official from the Idaho State Lottery about the possibility of developing a joint system using Lottery's contractor. As shown in Figure 2, during the 1995 legislative session, the Legislature authorized an automated licensing system and appropriated funding. Although the enacted legislation does not mention how the system is to be implemented, committee meeting minutes show that department officials told Legislators they intended to use Lottery's existing

Beginning in the early 1990s, the department began exploring the possibility of establishing an automated system.

In 1994, the Idaho State Lottery approached the department about developing a joint system using Lottery's contractor.

Figure 2: Key Events in the Department of Fish and Game's Development of an Automated Licensing System, December 1994–November 1999

| <u>Date</u> | <u>Event/Agreement</u> | <u>Purpose</u> |
|--------------------------|--|---|
| Dec. 1994 | Interagency agreement between Lottery and Fish & Game | To investigate whether Lottery's communication network could be used for Fish & Game; to review existing systems in other states; and to delegate responsibilities to address legislative, budget, technical, and public relations issues. |
| Legislative session 1995 | HB 46 and HB 380 | Authorized system; appropriated \$1.18 million to develop system. |
| Aug. 1995 | Memo of Understanding between Lottery, Fish & Game, and contractor | To document agreement to incorporate an automated licensing system into 1989 contract between Lottery and the contractor. Terms to be included in future amendment to Lottery's 1989 contract. |
| Dec. 1995 | Implementation | First license issued using automated system; problems persist for several months. |
| Aug. 1997 | Amendment No. 5 to contract between Lottery and contractor | Upgraded Lottery's hardware and software; formalized agreement to establish an automated licensing system; designated Fish & Game as a 3 rd party beneficiary; incorporated revised payment terms and extended termination date to 6/30/00. |
| July 1998 | Software acceptance | Fish & Game issued a conditional certificate of acceptance through Lottery. |
| Feb. 1999 | Agreement between Lottery and contractor | Terminated 1989 contract (including Amendment No. 5), except for provisions for automated licensing system. |
| Nov. 1999 | Interagency agreement between Lottery and Fish & Game | Described services shared between Lottery and Fish & Game including computer room, help line, and operations and maintenance personnel. |
| Nov. 1999 | Agreement between Dept. of Administration and contractor | Dept. of Administration signed as statutory agent for Fish & Game; terminated remaining provisions of 1989 Lottery contract (including Amendment No. 5); provided for continued operations, purchase of equipment by Fish & Game, weekly payment terms for software license, and weekly payment terms for operations and maintenance. |

Source: Office of Performance Evaluations analysis of documents received by the Department of Fish and Game.

communication lines and computer system to develop the Fish and Game system.

Implementation of the automated licensing system was a lengthy process, involving a number of agreements and nearly three years between the first document of agreement in August 1995 and system software acceptance in July 1998. In a February 1996 survey conducted by the licensing system contractor, two months after the system issued its first license, 65 percent of the retail vendors who responded reported their overall attitude toward the system was "positive."

INITIAL LICENSING SYSTEM ACQUISITION

As noted, the Department of Fish and Game held informational meetings with Legislators and retail vendors throughout the state to obtain feedback about the possibility of establishing an automated system. During the 1995 session, the department received legislative approval and funding to develop an automated system. Initially, the department sought to collaborate with the Idaho State Lottery to develop a licensing system that would use Lottery's existing telecommunications infrastructure and its system contractor.

In June 1995, the department stopped ordering paper license forms, effectively dismantling its manual licensing system and committing itself to a computerized licensing system for the 1996 license year. In August 1995, the Department of Fish and Game, Idaho State Lottery, and the system contractor signed a Memorandum of Understanding, under which the department's licensing system was acquired. Under the Memorandum of Understanding, the system contractor developed software, installed equipment, and trained retail vendors on the use of the system. In December 1995, the department began using the system to issue licenses.

Acquisition Process

To determine whether the system acquisition process conformed to applicable state laws and regulations, we reviewed available documentation and interviewed Department of Fish and Game, Idaho State Lottery, and Division of Purchasing staff. We also

The Legislature authorized the department to establish an automated licensing system in 1995.

The department began using the automated system in December 1995 to issue most licenses.

The process by which the system was acquired violated state purchasing requirements.

The department did not seek competitive bids, as required, when it acquired the system.

sought legal analysis from an outside law firm with extensive experience in contract law. Although we detected no evidence of intent to violate state laws, we found:

- **The Department of Fish and Game did not comply with state purchasing laws and regulations when it acquired its automated licensing system.**

Under Idaho Code, the administrator of the Division of Purchasing is required to acquire all property for state agencies.⁴ As part of these responsibilities, the administrator must approve contracts for the acquisition of goods and services. In addition, to maximize competition and value to the state, Idaho Code requires open competitive bidding when the property to be acquired is reasonably expected to cost more than \$25,000.⁵

We identified two areas in which the department did not follow these purchasing requirements.

1. *The department acquired its licensing system without competitive bidding, a requirement from which it had not been exempted.* As noted, the department's system was acquired under the 1995 Memorandum of Understanding with Lottery, and without seeking competitive bids. As early as August 1994, the department was developing system specifications and focusing on a single contractor, rather than examining potential vendors. In August 1995, the Department of Fish and Game, the Idaho State Lottery, and Lottery's contractor signed a Memorandum of Understanding that spelled out the parties' intention to develop a system and establish a formal contract. Their agreement was formalized in a 1997 amendment to Lottery's existing contract that added the Department of Fish and Game as a third party beneficiary.

Although statute and rule provide certain exemptions to competitive bidding requirements, none of these exemptions applied to the department's licensing system acquisition:

- Some agencies, such as the Idaho State Lottery, are statutorily exempt from state purchasing regulations,

⁴ IDAHO CODE § 67-5717(1) (Supp. 1999).

⁵ IDAHO CODE §§ 67-5715 (1995), 67-5718 (Supp. 1999), and IDAHO ADMIN. CODE, March 20, 1997, Vol. 8, IDAPA 38.05.01.011.78 and 38.05.01.056.

Figure 3: Application of Potential Exemptions to Formal Competitive Bidding Process

| <u>Exemptions</u> | <u>Application to Fish and Game</u> |
|---|--|
| <ul style="list-style-type: none"> Emergency purchases <i>Administrator of the Division of Purchasing must review agency request and provide written approval</i> | No written approval given |
| <ul style="list-style-type: none"> Purchases less than bid limits <i>Not exceeding \$25,000</i> | System acquisition exceeded bid limits |
| <ul style="list-style-type: none"> Sole source purchases <i>Administrator of the Division of Purchasing must make determination based on a written request from the agency</i> | Not requested by department prior to 1998 |
| <ul style="list-style-type: none"> Federal government acquisitions | Did not apply |
| <ul style="list-style-type: none"> Rehabilitation agency acquisitions | Did not apply |
| <ul style="list-style-type: none"> Correctional Industries products | Did not apply |
| <ul style="list-style-type: none"> Purchases from GSA federal supply contractors | Did not apply |
| <ul style="list-style-type: none"> Purchases exempt by written policy <i>Administrator of the Division of Purchasing must write policy that exempts items for which bidding is impractical</i> | No written exemption given by administrator of the Division of Purchasing |
| <ul style="list-style-type: none"> Existing state or statewide contracts <i>Contracts are to be administered by the Division of Purchasing on behalf of or for the benefit of an agency</i> | Lottery's contracts are not state contracts and are not administered by the Division of Purchasing |

Source: Office of Performance Evaluations review of IDAHO ADMIN. CODE, March 20, 1997, Vol. 8, IDAPA 38.05.01, and related contract process documentation.

including competitive bidding, altogether.⁶ Idaho Code does not exempt the Department of Fish and Game, an agency under the authority of the Division of Purchasing, from purchasing regulations.⁷

- Agencies may be exempted from the competitive bidding requirements under certain situations.⁸ As shown in Figure 3, none of these applied to the department.

⁶ IDAHO CODE § 67-7451 (1995).

⁷ IDAHO CODE § 67-5716(15) (Supp. 1999).

⁸ IDAHO ADMIN. CODE, March 20, 1998, Vol. 8 IDAPA 38.05.01.051. Many of these exemptions are also found in Idaho Code.

The department was required to adhere to state purchasing laws, and had not been specifically exempted.

A December 1996 meeting provided the department legal review, but came after the system had been acquired.

- Administrative rules allow the Division of Purchasing to make a written delegation of purchasing authority to agencies on a case by case basis prior to property acquisition.⁹ In this case, the division did not delegate authority to the department to acquire the licensing system.

We reviewed all available documentation and correspondence for approvals related to development of the system. In the absence of the documentation we sought, we spoke extensively with officials and staff who were involved in the department's licensing system acquisition beginning in 1994, and several deputies of the Office of the Attorney General who have been involved in reviewing various agreements and providing counsel.

We were told that in December 1996, after the system had been acquired but before any payment had been made, agency representatives, representatives of the Office of the Governor, and several Deputy Attorneys General met to provide legal assistance to the department. The Office of the Attorney General subsequently provided Lottery and the Department of Fish and Game legal assistance in drafting the 1997 amendment to Lottery's contract (Amendment No. 5). We were also told that prior to this meeting, in response to concerns that had arisen, an exemption from purchasing rules was sought from the Department of Administration to allow the department to continue acquiring a licensing system without competitive bidding, but that the requested exemption was denied.

Department staff also told us they relied, in part, on the approval of Lottery's counsel as early as 1994 for acquiring a licensing system without competitively bidding by "piggybacking" the authority and existing contract of the Idaho State Lottery.¹⁰ However, we have been unable to

⁹ IDAHO ADMIN. CODE, March 20, 1997, Vol. 8 IDAPA 38.05.01.021.

¹⁰ The department staff who were involved at the time have also said they relied on public support for a licensing system and approval by the Fish and Game Commission. In addition, they told us they relied on the Legislature's approval to develop the system given in HB 46 during the 1995 session. However, this came up to five months after the department began discussions with the contractor. Furthermore, neither HB 46 nor the system appropriation bill specifically directed the department to acquire a system in this manner.

locate any documentation of Lottery's review or legal interpretation. In addition, Lottery's counsel at the time told us that regardless of whether he was consulted on this matter, he would have been primarily concerned with Lottery's authority, rather than that of the Department of Fish and Game. One of the Department of Fish and Game's Deputy Attorneys General at the time told us that he had not been involved at this stage, and was uncertain whether the other deputy, who no longer serves the department, had assisted in reviewing the arrangements. Regardless, the Division of Purchasing was the only authority that could have approved the acquisition of the licensing system on behalf of the Department of Fish and Game.

Department staff said they operated consistent with the legal advice they received, although documentation is lacking.

According to documentation we reviewed, officials in the Division of Purchasing were made aware of the department's acquisition process when questions arose in June 1995. According to the then division administrator, he questioned the department and was told that they would be buying a system from Lottery and therefore would not need to go through the Division of Purchasing.¹¹ As a result, the division took no action at the time.

In our interviews with current Division of Purchasing staff, we were told that joint purchasing agreements often occur under the Joint Powers Act. The purpose of this act is to enable agencies to cooperate to their mutual advantage.¹² However, according to legal analysis we received, the Joint Powers Act does not apply under this arrangement. The Joint Powers Act does not confer the powers, privileges, or authority of one agency onto another agency that does not already possess those powers, privileges, or authority.¹³ Lottery's exemption from purchasing laws extends only to the Lottery, not to other state agencies. As a result, the Department of Fish and Game could not legally rely on Lottery's exemption, even if it used Lottery's existing contractor.

The Joint Powers Act did not give the department the needed authority to forgo purchasing regulations.

¹¹ Interagency billing is authorized by Idaho Code § 67-3516(3) (1995). However, the steps the statute prescribes for this process were not followed in this case.

¹² IDAHO CODE § 67-2326 (1995).

¹³ IDAHO CODE § 67-2328 (1995).

In addition:

2. *The Department of Fish and Game acquired its automated licensing system and operated it for nearly two years without a formal contract.* As noted, the department acquired the system under a 1995 Memorandum of Understanding with Lottery and began using the system to issue licenses in December 1995.

The department did not have an enforceable contract in place during the first 18 months it used the system.

However, according to the legal analysis we received, the Memorandum of Understanding would likely be found illusory and unenforceable as a contract. The Memorandum of Understanding states that it was intended to set forth in principle changes that were subject to a future formal agreement. It defined payment terms, services, and responsibilities that are typically addressed in contracts, but clearly stated that it was made to memorialize certain discussions between the parties that were subject to the execution of a formal amendment to the Lottery agreement. That contract amendment was not signed until August 1997, two years after system development began and 18 months after the department began using the system to issue licenses.

The agreements under which the system was acquired were not approved by the Division of Purchasing as required.

Furthermore, although required by law to act as the department's statutory agent in acquiring the licensing system, the Division of Purchasing did not officially approve the agreements under which the system was acquired. Neither the Memorandum of Understanding nor the 1997 amendment to Lottery's contract (Amendment No. 5) was signed by the Division of Purchasing, and, according to division officials and staff, the division did not informally approve the agreements.¹⁴

According to the legal analysis we received, should a court determine that the department acquired its system in violation of state purchasing laws, the agreement under which the acquisition was made would be void.¹⁵

¹⁴ Division of Purchasing staff said they are not typically involved in Memorandum of Understandings, as these agreements are normally between government agencies and do not involve private companies. Division staff also stated that, although they knew about Amendment No. 5, they have no documents on file related to it. Staff said they understood the agreement was managed through Lottery, over which they have no authority.

¹⁵ IDAHO CODE § 67-5725 (1995).

Acquisition Agreement Terms

We also reviewed the terms of the Memorandum of Understanding and the 1997 amendment to Lottery's contract (Amendment No. 5) to assess whether the agreements adequately protected the state's interests. We found:

- **The agreements under which the Department of Fish and Game acquired its licensing system lacked clear and complete terms, complicating contract oversight and enforcement.**

Developing and implementing complex technology systems is difficult and can result in unforeseen performance problems. However, carefully crafted contract specifications, often developed as part of a request for proposal, can minimize conflicting interpretations.¹⁶

The lack of clear specifications diminished the department's ability to enforce requirements, control costs, and avoid potential disputes. For example:

- *Telecommunications network specifications were not adequately defined.* An interagency agreement between the department and the Idaho State Lottery in December 1994 specified that the department planned to investigate the feasibility of using Lottery's telecommunications network for the development of its automated licensing system.¹⁷ However, there is little evidence to suggest that the department conducted such a review. Nevertheless, in August 1995, the department entered a Memorandum of Understanding with Lottery and its system contractor to begin developing the system. Shortly thereafter the contractor informed the department that it would need to install separate analogue lines (data lines) and dial-up functionality could not be provided.¹⁸ As a result, the department's plan, which the

We also reviewed the terms of the agreements under which the system was acquired.

Because the agreements lacked clear terms, the department was not able to hold the contractor to its original plan, resulting in unanticipated costs.

¹⁶ Idaho Department of Administration, Division of Purchasing, *Guidelines for Developing a Request for Proposal* (July 1999), 9–11.

¹⁷ Idaho Department of Fish and Game and Idaho State Lottery, *Interagency Agreement* (1994).

¹⁸ Analogue lines maintain a constant connection with the computer, while dial-up lines operate over standard telephone lines that connect and disconnect with each transaction.

Failure to include contractor performance requirements in the agreements limited the department's ability to address system development problems.

Memorandum of Understanding did not specify, could not be implemented or enforced. According to department correspondence dated June 1998, these changes resulted in the "department's communication costs increasing by about \$400,000 per year."¹⁹ Staff from the Idaho State Lottery, with experience operating both analogue lines and dial-up lines, reported that their analogue lines cost five times more than their dial-up lines.

- *The Memorandum of Understanding did not adequately protect the department against poor contractor performance.* In August 1995, the contractor assigned responsibility for developing Idaho's licensing system to a subsidiary. Numerous system development problems occurred, including system outages, poor response times, missed installment dates, software bugs, and hardware failures. The system contractor told us it had underestimated the complexity of the department's requirements. In July 1997, the contractor brought in its own staff to address the system's performance problems. A conditional certificate of software acceptance was issued in July 1998, three years after system development was initiated. Without specific language in the contract, the department was limited in its ability to prevent the contractor from assigning responsibility to an inexperienced subsidiary or otherwise address system performance problems.
- *Payment provisions in the Memorandum of Understanding and in Amendment No. 5 did not adequately reflect the complexity of the various licenses and programming requirements.* Payment provisions were broadly defined in the agreements under which the system was acquired. Some payments were based on product deliverables and execution of agreements, while a transaction fee was established for each license processed by the system. However, the agreements did not provide adequate details, leading to subsequent payment disputes. According to system contractor estimates in 1998, a dispute over the interpretation of the sportsman's pak license count amounted to an overall difference of \$324,000.²⁰ Also, the agreements did not

Unclear payment provisions in the initial agreements led to payment disputes.

¹⁹ According to department officials, use of analogue lines ultimately resulted in a faster system with increased ability to handle greater volume.

²⁰ Department officials told us that this dispute reflected problems with the contractor's system design.

sufficiently define functionality modifications as contrasted with maintenance programming. Due to their conflicting interpretations, the contractor invoiced the department \$194,000 for these services in 1998, only \$9,000 of which the department eventually agreed to pay. Definitions of license transactions and system support services would have improved the department's ability to resolve disputes, or eliminated the disputes altogether.

- *An interagency agreement was not developed between the Department of Fish and Game and the Idaho State Lottery under Amendment No. 5. The responsibilities and obligations of the parties were not adequately defined in the 1997 amendment to Lottery's contract (Amendment No. 5). The amendment refers to an agreement between the agencies that was never formalized. Without such an agreement, the obligations and rights of the department and the Lottery were not clearly defined. Figure 4 lists obligations of the parties that could have been addressed in such an agreement. Since Amendment No. 5 was an enforceable contract between Lottery and the system contractor, Lottery was at risk for the payment and performance of the department's system.*

The department did not establish an interagency agreement with Lottery to formalize each agency's obligations.

Figure 4: Obligations That Should Have Been Specified Between the Parties Under Amendment No. 5

- The Department of Fish & Game's obligations to make payments to Lottery.
- Lottery's obligations to make payments to the system vendor.
- Lottery's obligation to sublicense the software to the Department of Fish & Game.
- The agencies' agreement to share equipment and personnel.
- Lottery's agreement to continue maintenance and repair of the computer room in the event that Lottery terminated agreement with the system vendor.
- Lottery's obligation to police the agreement on behalf of the Department of Fish & Game to determine whether or not any material breaches were committed by the system vendor.
- Lottery's obligation to provide notices to the Department of Fish & Game with respect to any claimed breaches of the agreement.
- The Department of Fish & Game's obligation to keep equipment and software confidential.

Source: Office of Performance Evaluations and legal review of the Department of Fish and Game licensing system documentation.

In 1999, the department established a five-year contract to continue system operation.

The department obtained the necessary approvals from the Division of Purchasing for its current contract.

CURRENT CONTRACT ESTABLISHMENT AND TERMS

In November 1999, the Department of Fish and Game signed a new five-year contract with its licensing system contractor to continue operating the automated licensing system. To analyze the contract execution process and the new contract's terms and payment provisions, we reviewed available documentation, interviewed department staff and officials with the Division of Purchasing, reviewed the contract terms with the assistance of an outside law firm, and compared the contract's payment provisions with those in the previous agreements.

Contracting Process

We found:

- **The Department of Fish and Game appears to have complied with applicable purchasing requirements in establishing the current five-year contract with its licensing system contractor.**

The department's new contract was appropriately reviewed and approved by the Division of Purchasing.²¹ In addition, the department received the needed sole source determination from the Division of Purchasing as required for the department to forgo formal bid solicitation and directly negotiate a contract with its existing contractor. The Division of Purchasing published the required notice, allowed the required protest period (during which no protests were received), and granted the sole source determination.

Further, in November 1999, the Department of Fish and Game and the Idaho State Lottery established an interagency agreement "in order to realize operational efficiencies by sharing hardware, facilities and personnel, for the benefit of the State of Idaho."²²

²¹ Consistent with the requirements of Idaho Code, the administrator of the Division of Purchasing reviewed the contract and signed it as the statutory agent for the department. Idaho Code § 67-5717(4) (Supp. 1999) specifies that the administrator of the Division of Purchasing "shall enter into all contracts and agreements, and any modifications thereto, for the acquisition of any and all property in behalf of and in the name of the state."

²² Idaho Department of Fish and Game and Idaho State Lottery, *Interagency Agreement* (1999).

This agreement outlined the hardware and facilities that would be shared by the agencies and clarified the sharing of the contractor's personnel.²³ Establishing such an agreement formalized the relationship between the two agencies and provided a legal basis for the department to use Lottery's equipment and facilities.

However, we found:

- **The Department of Fish and Game inadequately portrayed the Fish and Game and Lottery systems that had been developed in its request for a sole source determination.**

Purchasing regulations allow agencies to forgo competitive bidding requirements when property or services are "clearly and legitimately limited to a single source of supply."²⁴ Prior to making a "sole source" purchase, however, agencies must request and obtain approval from the Division of Purchasing.

While an exemption from competitive bidding requirements may have been justified based on the costs and time required to replace the department's existing system with a new one, the department did not provide this justification. Instead, the department requested a sole source determination because "the requirement of a joint system is reasonably available from a single supplier [our current contractor]."²⁵

As shown in Figure 5, a number of the reasons the department cited in support of this claim inadequately described its licensing system's relationship to Lottery's system. While the contractor provides a number of services to support both systems, the systems are primarily separate and unique. The two systems have completely different software, use different terminals, and share no analogue lines. Although the systems both use the same three T1 lines (main trunk lines), these lines may be shared by other users as well.²⁶ The systems have little hardware in common, with the estimated value of the shared hardware at less than

The sole source determination is questionable because it was based on the department's characterization of a "joint" system with Lottery.

Lottery's and Fish and Game's systems are primarily separate and unique.

²³ Under the agreement, Lottery agreed to house the department's central system hardware in the control room it provides the contractor.

²⁴ IDAHO ADMIN. CODE, March 20, 1997, Vol. 8, IDAPA 38.05.01.051.03.

²⁵ Idaho Department of Fish and Game, *Request for Sole Source Determination* (1998).

²⁶ The two agencies share T1 access costs estimated at \$26,000 per year.

Figure 5: Assessment of the Department of Fish and Game's 1998 Sole Source Request

| <u>Statement from Sole Source Request</u> | <u>Summary of Facts</u> |
|--|--|
| 1. System contractor has operated a joint system for Lottery and Fish & Game since December 1995. | Since December 1995, the system contractor had provided two unique systems to Lottery and Fish & Game. The systems use different software and run on different hardware. |
| 2. One computer operations facility is used to operate both systems, resulting in cost savings. | A small percentage of Lottery's facility houses Fish & Game's equipment. No value for the cost savings had been determined. |
| 3. Significant savings are realized by sharing data communication and transmission facilities. | Lottery and Fish & Game share T1 lines, but do not share any analogue lines or dial-up lines. They share some central communications equipment with an estimated value of less than \$50,000. |
| 4. One organization is responsible for the hardware and software maintenance of both systems, resulting in cost savings. | The system contractor provides computer operations and terminal maintenance staff to both Lottery and Fish & Game. The contractor reported that hardware maintenance for Fish & Game is not significant. The contractor has separate software programming staff for the two systems. |
| 5. Lottery and Fish & Game are co-located at about 110 locations. | Although about 25 percent of Fish & Game's retail vendors also sell Lottery tickets, no hardware (terminals) or communication lines are shared at these sites. |
| 6. The same contractor provides a telephone "help" line for both Lottery and Fish & Game retail vendors, resulting in cost savings from shared operators. | The system contractor's subsidiary operates a help line that serves both systems. There is no documentation of cost savings that may have been achieved. |
| 7. A Request for Information was issued in July 1998 to determine what vendors would be interested and able to provide a joint system. | The 1998 Request for Information gave potential vendors three options: to provide a Lottery system, a Fish & Game system, or a joint system. |
| 8. A Request for Additional Information was issued in September 1998 to obtain detailed information concerning potential contractors' interest and capability in operating a joint system. | The Request for Additional Information asked vendors to identify relevant system contracts and provide financial information, rather than interest and capability in operating a joint system. |
| 9. All responses, except for the current system contractor, were either not capable or not interested in providing a joint system. | One potential contractor pointed out that the systems were vastly different, requiring specialized equipment systems and resources. The current contractor has also described the systems in this manner. |

Source: Office of Performance Evaluations review of the Department of Fish and Game's *Request for Sole Source Determination* (1998) submitted to the Department of Administration, Division of Purchasing.

\$50,000. In addition, fewer than 25 percent of all retail vendors that sell Fish and Game licenses also sell Lottery tickets.

The Department of Fish and Game was aware of these differences well before requesting a sole source determination in 1998. As noted previously, the department initially maintained, in 1995, that it could share Lottery's telecommunications network, minimizing the department's system costs. However, in September 1995, the contractor informed the department that it would be unable to share Lottery's analogue lines. The department subsequently paid for the installation and operation of its own data network and lines. Also, in a 1995 informational mailing to retail vendors, the department described the two systems as "totally separate."²⁷ Further, according to the Deputy Attorney General assigned to Lottery, Lottery's director acknowledged the limited overlap between the systems during negotiations for the 1997 amendment to Lottery's contract (Amendment No. 5). Nonetheless, in a 1998 Request for Information, the department expressed a preference for a contractor that could provide both a Lottery system and a Fish and Game licensing system. Also that year, the department's request for a sole source determination characterized the systems as a "joint system."

The Division of Purchasing reviewed the department's sole source request in November 1998, and granted the determination based on an inadequate description of the systems that had been developed. When we spoke with Division of Purchasing officials during the course of our evaluation, they still were unaware of the differences in the two systems. Specifically, they indicated they believed there was significant overlap between the two systems, including shared lines.

Based on the sole source determination, the department was exempted from competitively bidding the automated licensing system. By insisting that a single contractor was needed to operate both systems, the department may have limited the involvement of other potential contractors and unfairly benefited the existing contractor. Also, without issuing a Request for Proposal, the department did not provide other potential licensing system contractors an opportunity to compete.

The department became aware of system differences in 1995.

The contractor may have unfairly benefited from the "sole source" competitive bidding exemption.

²⁷ Bureau of Administration, *Department of Fish and Game*, memorandum to Fish and Game license vendors, 26 January 1995.

Current Contract Terms

The current contract is largely adequate, although improvement is possible.

We asked an outside law firm with extensive experience in contract law to review the terms of the department's current contract. We found:

- **Although largely adequate, selected terms of the Department of Fish and Game's new contract with its licensing system contractor could be improved to better protect the state's interests.**

According to the legal analysis we received, the current contract between the Department of Fish and Game and its contractor is an enforceable agreement and contains many of the terms that are common in this type of contract. However, the contract does not clearly spell out key performance requirements, and lacks other terms that are common in this type of contract. Specifically:

Contractor performance requirements should be specified.

- *System functionality requirements are not specified.* While the department worked with the system contractor to develop detailed functional specifications for the system, the contract does not include these specifications directly or by reference. Performance work statements, which define the agency's requirements in terms of the objectives and measurable outputs, are a critical element of software development contracts.²⁸
- *Contract management practices are not adequately specified.* The current contract does not specifically address contract management processes and responsibilities. For instance, the contract does not require the contractor to designate a project leader, develop a project management plan, or define the process to be used when changes are proposed to the scope of work or technical specifications, provisions that are beneficial to the state in overseeing the contract.
- *Liquidated damages may be assessed, but the process for resolving disputes about these damages is not defined.* The contract allows the department to assess liquidated damages should the contractor fail to provide or perform as required,

²⁸ Office of Federal Procurement Policy, *Software Development Contracts: Performance-Based Service Contracting (PBSC) Work Statement* (1997), 1–3.

and recognizes that disputes may occur in determining the amount of liquidated damages. However, no process to resolve such disputes is spelled out in the contract.²⁹

- *The contract requires the department to pay the contractor even if the contract is terminated for “force majeure.”* The contract allows the department to stop making software license payments to the contractor if the contract is terminated because (1) the Legislature does not appropriate funding for the system, or (2) the contractor breaches the agreement. However, the contract does not allow the department to stop paying the software license fees if the contract is terminated for “force majeure,” or fault outside of the department’s control.³⁰ This is a standard term that protects the state’s interests.
- *Indemnity provisions are not included in the contract.* Although the contract requires the contractor to obtain general liability insurance and name the department as an additional insured, it does not contain a provision that would otherwise indemnify the department of all liability, costs, damages, and other fees arising out of the negligence or intentional conduct of the contractor or its agents. Situations could arise where the insurance company would refuse to defend and indemnify the department; an indemnity clause would nonetheless require the contractor to provide that defense and indemnify the department.

The lack of specific system functionality requirements in the contract could lead to disputes between the department and the contractor about the services to be provided. The ambiguous liquidated damage clause could lead to problems in recovering damages for breach of contract. In addition, without the standard provisions that are lacking, the state may be exposed to risks that could lead to additional and unanticipated costs.

Several other changes could be made to the existing contract to better protect the state’s interests.

²⁹ We reviewed earlier drafts of the agreement and learned that they contained the necessary language regarding liquidated damages. As a result, it appears the language was accidentally omitted from the final draft.

³⁰ We reviewed earlier drafts of the agreement and learned that they contained the necessary language. As a result, it appears the language was accidentally omitted from the final draft.

Therefore:

We recommend the Department of Fish and Game amend its current contract to address identified weaknesses.

Payment Provisions

As part of our review, we compared the payment provisions in the new contract with the payment provisions in the previous agreement. We found:

- **The payment terms in the Department of Fish and Game's new contract are reasonable when compared to the terms of the previous agreements.**

The department's current contract calls for standard weekly payments, rather than payment per license issued.

The new flat weekly fee increases payment consistency and reduces the likelihood of payment disputes.

The current contract requires the department to pay \$15,000 per week to the system contractor over the next five years.³¹ Under the previous agreements, once the system was developed, the department paid the contractor \$0.65 per license issued.³² This arrangement amounted to payments of \$12,780 per week, on average, excluding system development payments. Assuming all else remains equal, average weekly payments under the new contract will increase about 17 percent or \$115,000 per year.

The change from a per license payment structure to a flat weekly fee offered several benefits to the department. For example, it provided the department greater stability and predictability in its payments to the contractor. Under the current contract, the department pays the same amount for each week, regardless of fluctuations in the number of licenses sold. Also, payments are to be consistent from year to year throughout the life of the contract. The change to a flat weekly fee should also reduce the likelihood of payment disputes between the department and the contractor.

It is possible that the cost per license could increase during the five-year contract period, should the number of licenses issued by the system decrease due to increased use of alternative license

³¹ This includes \$5,800 for use of the software license and \$9,200 for facilities management services.

³² These agreements also specified that the department would make several lump sum payments to compensate the contractor for system development and implementation.

sales mechanisms, such as the Internet. It is also possible the cost per license could stay the same or even decline, if the number of licenses sold increases. From 1996 through 1999, the number of licenses issued by the system increased slightly.

One aspect of the current contract that has been subject to question is the payment provision for system hardware. In its current contract, the department agreed to purchase the system hardware, including all vendor terminals and central communication and processing equipment, from the contractor at a cost of \$150,000.³³ However, under the previous agreements, the department could have purchased this same hardware from the contractor for \$1 at the end of the contract period (July 2000).

While this provision appears to result in the department having incurred an unnecessary expense, it appears to be reasonable. Both department officials and contractor staff told us that payment for system hardware was an important element to the contractor during the negotiations. For their part, department officials told us they had agreed to this payment term believing that the increased cost would be offset by favorable changes to other provisions. For example, the new contract requires the contractor to provide specified programming services at no additional cost, while the previous agreement required the department to pay for programming over 750 hours per year. The department paid a total of \$9,000 for programming services in 1998 and expects to pay approximately \$46,000 for these services for 1999.

Payment terms for system hardware appear reasonable, given the negotiation process.

OVERSIGHT OF CONTRACT PAYMENTS

As of February 19, 2000, the Department of Fish and Game had made 67 payments, totaling more than \$3.5 million, to its automated licensing system contractor for hardware, hardware installation, software development, and license, permit, and tag processing. Table 1 summarizes payments made to this date under the former and current agreements.

To determine whether the department's contractor payments were consistent with statutes, policy, and contract terms, we reviewed

As of February 2000 the department had paid more than \$3.5 million to its licensing system contractor.

³³ In its new contract (signed in February 1999), the Idaho State Lottery agreed to a similar purchase arrangement for system hardware.

Table 1: Department of Fish and Game Payments to System Contractor, as of February 19, 2000

Payments Under Previous Agreement

| <u>Lump Sum</u> | <u>License Processing</u> | <u>Software Services</u> | <u>Total</u> |
|-----------------|---------------------------|--------------------------|--------------|
| \$638,956 | \$2,634,564 | \$9,036 | \$3,282,555 |

Payments Under Current Contract

| <u>Software License</u> | <u>Facilities and Maintenance</u> | <u>Hardware Purchase</u> | <u>Total</u> |
|-------------------------|-----------------------------------|--------------------------|--------------|
| \$40,600 | \$64,600 | \$150,000 | \$255,000 |

Total Payments \$3,537,555

Source: Office of Performance Evaluations analysis of Statewide Accounting and Reporting System and Department of Fish and Game data.

Department of Fish and Game payment records for the previous and current agreements, department policies, data provided by the contractor, and Idaho Code.

We found:

- **Overall, the Department of Fish and Game's process for paying its licensing system contractor could be improved.**

The department's payments generally conformed to contract provisions.

Generally, the department's payments were made timely and the amounts paid overall conformed to contract provisions. Our review revealed no incidents of fraudulent payments or other improper disbursements. The department rightly withheld all payments for work under the 1995 Memorandum of Understanding, under which the system was acquired. Further, on one occasion, the department reduced the amount paid to the contractor for system development by approximately \$211,000 due to costs the department incurred because of problems implementing the system.³⁴

³⁴ These included costs for printing and distributing emergency paper licenses, costs associated with a controlled hunt application, and retail vendor charges that became uncollectable due to delayed implementation of the retail vendor invoicing system.

However, department staff reviewed invoices inconsistently and inadequately and in many instances payment records lacked sufficient documentation to verify the amount paid. Further, the department did not handle questionable invoices according to Idaho Code. These practices increased the risk of erroneous or duplicate payments.

Department Review of Contractor Invoices

Specifically, we found:

- **The Department of Fish and Game's review of contractor invoices was inadequate and, at times, led to inaccurate payments.**

Department policy requires a minimum of two separate approvals of an invoice. Payments must be approved by "the purchaser and the regional supervisor or bureau chief" and "the same person cannot sign as purchaser and, also, as acting regional supervisor or bureau chief."³⁵ Department policy further provides that supervisors may require additional approvals as deemed necessary for proper oversight.

However, 73 percent (49 of 67) of the department's payments to the system contractor contained evidence of review by only one individual.³⁶ Review and approval by more than one person reduce the risk of erroneous payment by providing an opportunity for one person to verify the calculations of another. A second level of review also can help reduce the risk of fraud.

Further, due to disputes between the two parties, the invoices required a high level of review. According to department and contractor officials and staff, the two parties disagreed on allowable charges for two license packages. The contractor initially billed the department for each of the twelve permits and tags associated with the sportsman's pak and for each of the three tags in a Deer/Elk/Bear pak, while the department maintained that it should pay for each package as one transaction. The contractor

Invoice review was inadequate.

A full 73 percent of contractor payments contained no evidence of a second level of review.

Due to payment disputes, invoices required a high level of review.

³⁵ Idaho Department of Fish and Game, *Purchasing Policy*, Policy A-15.01 (1999), 7.

³⁶ The other 18 payment records contained the initials of at least one other person, but the degree of review conducted by that person could not be determined.

**At times,
inaccurate
payments were
made.**

and the department never formally reached agreement on this dispute, increasing the need for detailed invoice review.³⁷

At times, the invoices lacked detailed review, leading to inaccurate payments. For example, in March 1999, the department made a final payment of \$2,667.20 (without an invoice) for licenses sold during 1998. According to our calculations, the contractor should have been paid \$12,667.20, or \$10,000 more. Had this payment, supporting documents, and calculations been reviewed by more than one person, the error described may have been detected and corrected before the payment was made.³⁸

We also found:

**Nearly two-
thirds of
payment
records lacked
needed
documenta-
tion.**

- **Sixty-one percent of payment records did not contain sufficient documentation to support the amount paid.**

Documentation of payment management helps demonstrate that invoices are being scrutinized and properly approved, aids secondary review of payment requests, and reduces the risk of unintentional error or fraud. This includes three elements:

1. Verification that the goods or services were ordered, as evidenced by a valid purchase order or contract.
2. Verification that the goods or services were received, as evidenced by a receiving report, inventory, or other documentation showing that quantity (in this case the number of licenses issued) has been verified.
3. Approval by the proper authority, as evidence by the signature or initials of the approval authority on or attached to the invoice.³⁹

³⁷ Beginning in February 1999, the department began paying the invoiced amount, because according to department officials, the contractor stopped billing packages as multiple licenses.

³⁸ We referred this instance to the department for appropriate adjustment.

³⁹ American Institute of Certified Public Accountants, *AICPA Audit and Accounting Guide: Audits of State and Local Governmental Units*, (New York: AICPA, 1998), 242–244.

In most cases, department payments to its licensing system contractor were documented with an invoice. However, records for 61 percent (41 of 67) of the payments made over the period of our review did not contain other needed attachments or notations.⁴⁰

- In 10 of 67 cases (15 percent), the invoiced amount was changed by handwritten notes and calculations, with no additional explanation. For example, in August 1997, the department received an invoice for the sale of 1,827,898 licenses. Department calculations on the invoice reduced the number of licenses to 1,621,019 licenses, from which a new payment amount was determined. Although \$1,218,678.50 was requested, \$948,296.07 was paid.⁴¹ No other documentation for this change was included.
- In other cases, the department made payments without providing documentation to support the invoiced or paid amount. For example, in June 1999, the department paid \$110,736.60 on five invoices for license sales. The invoices listed the number of licenses for which the contractor requested payment, but contained no evidence that the number of licenses or amount had been verified for accuracy.

In 15 percent of cases, no documentation was provided to support handwritten changes to invoices.

Department Handling of Questioned Billings

Given billing disputes between the department and the system contractor, we reviewed billing correspondence between the parties.

We found:

- **The Department of Fish and Game did not follow statutory requirements in its handling of questioned billings received from its licensing system contractor.**

In cases of inaccurate or improper invoicing, Idaho Code requires state agencies to notify the vendor, in writing, within ten days of

Statutes establish a process to follow when billed amounts are questioned.

⁴⁰ In ten cases, computer reports were attached as evidence of verification of the number of licenses for which the department was billed.

⁴¹ The department's calculated amount due was \$1,053,622.30, however \$105,366.23 (ten percent) was withheld until after software acceptance under the terms of the contract.

Forty percent of payments were different from billed amounts.

receipt of an incorrect invoice.⁴² The contractor then has the opportunity to correct errors or, if the agency and vendor do not agree on the correct amount, to bill and receive payment for any undisputed amounts while coming to agreement on the remainder.

Throughout the department's dispute over billing for license packages, the department adjusted invoices and made payment according to its own calculations. Forty percent (27 of 67) of the payments made were different than the amount requested on the invoice attached to the payment record. None of the 27 payment records that differed contained documentation that the department notified the contractor that its invoice was incorrect or being questioned.⁴³ For example:

- In November 1997, the contractor submitted an invoice for approximately \$4,600 for licenses, permits, and tags issued by the system during a single week. This invoice was attached to a payment of \$440,337.30. While no other explanatory documentation was provided, our review showed that this amount covered payment for licenses issued over a four-month period as well as a lump-sum payment of \$200,000 for successful installation of a controlled hunt application.
- In September 1999, the contractor submitted an invoice for \$15,559.70 for one week's license sales. The department reduced the amount on the invoice by about \$2,000 and paid \$13,529.20. There was no documentation that the contractor was notified that the invoice was questioned or provided an explanation for the amended payment.

The department did not follow the prescribed process to address payment disputes.

Adherence to the notification provisions in Idaho Code could have increased the accuracy of payment records. Our review found three payments to the contractor totaling more than \$130,000 that had not been credited to the department's account. Had the contractor been timely notified on an invoice-by-invoice basis of department disputes with the invoiced amounts and given

⁴² IDAHO CODE § 67-2302(12) (1995). An earlier subsection requires that invoices be paid within 60 days of receipt. If an agency provides timely, written notification of an incorrect invoice and the vendor corrects it within five days, the vendor is still entitled to payment within 60 days of initial receipt.

⁴³ Letters of correspondence between the parties on the issue of disputed license counts discussed aggregate amounts due rather than specific invoices and were consistently initiated outside the statutory time frame.

the opportunity to submit corrected invoices, these payments may have been properly applied to the department's account.⁴⁴

Furthermore, adhering to the statutory notification provisions might have helped the parties to achieve agreement on the license pak billing dispute that continued over 16 months. Documenting invoice changes may have increased assurance that appropriate amounts were being paid.

Other Weaknesses in the Payment Oversight Process

Finally, we found:

- **Weaknesses in the Department of Fish and Game's contract payment procedures unnecessarily increased the risk of erroneous or duplicate payments.**

A number of weaknesses in the department's payment oversight process increased risk and present a future risk if not corrected:

- A department official told us that he received and printed invoices from the licensing system contractor by e-mail. Invoices also were received by other department staff, who may also have printed them. Consequently, it was difficult to identify an original invoice among multiple copies, including photocopies. This practice increased the risk of paying an invoice more than once.
- Contractor payments were processed through two different offices at the department. Of the 67 payments, 43 were processed by the purchasing office and 24 by the accounts payable office. All lump-sum payments were processed through the purchasing office, but both offices processed license sales-based payments. This practice increased the risk of paying a single invoice twice.⁴⁵

Invoices were electronically received, printed, and, in some cases, paid by more than one office, increasing the risk of duplicate payment.

⁴⁴ We have provided the contractor the particulars of those payments so that they may be properly credited.

⁴⁵ On December 17, 1999, the purchasing office processed payment of an invoice for \$13,529.20 for license sales in September 1999. On January 13, 2000, the accounts payable office processed payment of the same invoice. We brought this to the attention of department officials who have made appropriate adjustments.

**Most invoices
were not
numbered or
date-stamped.**

- All invoices were dated, but only 9 of the 67 invoices (13 percent) had an invoice number as a unique identifier.⁴⁶ The absence of a unique, contractor-assigned number increased the risk of paying an invoice more than once.
- Only 51 percent of the contractor invoices were date-stamped with the date of receipt. Receipt stamping is needed to identify the date an invoice is received and help ensure an invoice is paid within the time frame required by statute or contract. It also marks the original copy of the invoice to ensure that only one copy is paid.

Due to errors that have occurred and the unnecessary risk of further problems inherent in the department's oversight procedures:

We recommend that the Department of Fish and Game improve its contract payment oversight procedures.

**The
department
should adhere
to its payment
policies and
make other
improvements.**

To conform to department policy, standard payment practices, and desirable internal controls, and to reduce future risk, the department should:

- Process all payments of a specified type through one office and from an original invoice.
- Request the contractor submit a single invoice for each billable period including lump-sum payments, which should be date-stamped upon receipt.
- Delegate initial invoice verification to a party other than the Administration bureau chief. The bureau chief could then review and approve the verification, as set out in department policy.
- Notify the contractor of any incorrect invoices in writing as provided in Idaho Code. If the department and the contractor disagree on a contract provision relating to payment, the contractor could separately invoice undisputed amounts and receive payment for those amounts without waiting for a resolution.

⁴⁶ According to the contractor's staff, the contractor's policy changed to require invoice numbers in November 1999.

Response to the Evaluation

**IDAHO FISH & GAME**

600 South Walnut
P.O. Box 25
Boise, Idaho 83707-0025

Dirk Kempthorne/Governor
Rod Sando/Director

May 30, 2000

Nancy Van Maren, Director
Office of Performance Evaluation
Statehouse Mail

Dear Ms. Van Maren:

Thank you for the opportunity to review the report on our automated licensing system, and for the discussion with you and members of your staff. Your analysis and recommendations will be very helpful to the Commission, new Director, and Department as we work to improve the management of this important system.

Your findings fall in three major categories: The initial system, operational in 1995, was not acquired in accordance with State law; the current contract, executed in 1999, does comply but some specific provisions need to be modified; and the Department's process for documenting contract payments needs improvement.

You are aware that neither the new Director nor any current members of the Commission were involved in the establishment of the original system. As a result, we can only conclude as you did that the various analyses, discussions, recommendations, and conclusions on the complex legal questions of utilizing Lottery's contractor are not well documented and are subject to differing opinions and interpretations.

The complexity of the legal situation is illustrated by the fact that since our meeting with you and your staff we have been advised by the Office of Attorney General that they do not agree the system was acquired without complying with the requirements of Idaho law. We understand we will receive a full response from the AG's office at such time as they and we are provided a copy of the analysis by the attorney with whom you contracted.

Perhaps at this date it is most important that all understand the approach with Lottery involved a broad range of interested and involved parties within State Government, as well as the public and Legislature. Our view is that the Department and Commission at that time proceeded in good faith to set up a state-of-the-art system for Idaho, and that the result has been successful. You have not identified any possible corrective actions, nor are we aware of any steps we might take to remedy whatever historical errors occurred in the original contract which was superseded in 1999.

Nancy Van Maren
May 30, 2000
Page 2

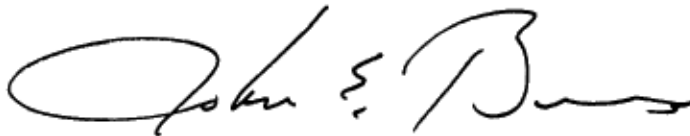
You have concluded that our current contract was established in compliance with State law. However, you do point out that some of the supporting statements for sole source acquisition provided to the Department of Purchasing were inadequate and we did not include some information that would strengthen the rationale. You also point out that selected terms of the contract could be improved to better protect the State's interests. We will proceed in line with your recommendations.

We strongly agree with your third finding that our payment processes and documentation need improvement. Steps to accomplish that critical need have already begun and we expect that problems similar to what you observed will not occur again.

Overall, we are pleased that you found no suggestion of improper payments or monetary loss to Idaho's sportsmen.

Thank you again for you and your staff's energy and efforts in this complex evaluation.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Burns". The signature is fluid and cursive, with a large initial "J" and a stylized "B".

John Burns
Commission Chairman

A handwritten signature in black ink, appearing to read "Rod Sando". The signature is cursive and somewhat stylized, with a large initial "R".

Rod Sando
Director

Completed Performance Evaluations

| <u>Publication Number</u> | <u>Report Title</u> | <u>Date Released</u> |
|-------------------------------|--|----------------------|
| 95-01 | State Travel Management | August 1995 |
| 95-02 | Medicaid Services for Children With Disabilities | November 1995 |
| 96-01 | Safety Busing in Idaho School Districts | February 1996 |
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